

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLINTON BURNS, III	§	
VS.	§	CIVIL ACTION NO. 1:10-CV-595
JOHN B. FOX, ET AL.	§	

MEMORANDUM OPINION REGARDING TRANSFER

Plaintiff Clinton Burns, III, an inmate previously confined at the United States Penitentiary in Atlanta, Georgia, proceeding *pro se*, filed this civil rights action pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).¹

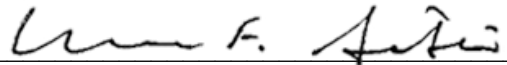
Analysis

When jurisdiction is not founded solely on diversity of citizenship, 28 U.S.C. § 1391(b) provides that venue is proper in the judicial district where the defendants reside or in which the claim arose. Venue is not proper in the Eastern District of Texas, because plaintiff alleges that the claim arose and the defendants reside in the Northern District of Georgia. Under 28 U.S.C. § 1404(a), the district court may transfer a civil action to any other district where it could have been brought for the convenience of parties and witnesses and in the interest of justice. Such a transfer may be done *sua sponte* and is reviewable only for an abuse of discretion. *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761 (5th Cir. 1989).

¹ Plaintiff filed his complaint on a form intended for prisoners seeking habeas relief under 28 U.S.C. § 2241. Because plaintiff's complaint concerns the conditions of his confinement, rather than the fact or duration of his confinement, the petition has been construed as a civil rights action brought pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The court has considered the circumstances and has determined that justice would best be served by transferring this action to the district where the defendants reside. Therefore, it is the opinion of the undersigned that this case should be transferred to the Atlanta Division of the United States District Court for the Northern District of Georgia. An order transferring the case to the Northern District of Texas will be entered by the undersigned.

SIGNED this 29 day of September, 2010.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE